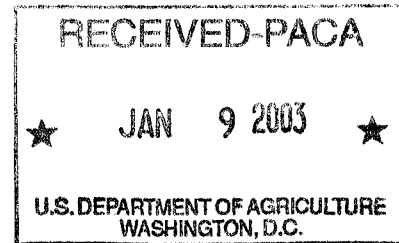




CURT MABERRY FARM
INC

Mr. Dexter Thomas
Senior Marketing Specialist
PACA Branch
F & V Programs, AMS
USDA
1400 Independence Avenue SW,
Room 2095- So. Building
Washington DC 20250-0242



Re: Docket No. FV02-369, pages 77002-77003 of the Federal Register, dated December 16, 2002

The proposed amendment to the PACA to allow fresh and frozen fruits to be coated or battered and still remain under the PACA umbrella is the correct and proper thing to do. As a berry grower in the State of Washington who is in the process of using the Perishable Agricultural Commodities Act to recover funds owed to us when a bank took over a processing operation and closed it down, I unequivocally recommend expanding the coverage of PACA. The markets are ever evolving and we should retain the rights of PACA if we are coating or battering our fruit without changing its consistency. As demand increases we do not want to forego our rights under PACA and we applaud the USDA for progressively taking care of the farmer.

Sincerely

Curt Maberry
Curt Maberry, Owner
Curt Maberry Farms

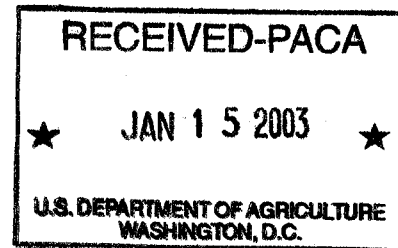


FROZEN POTATO PRODUCTS INSTITUTE

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January 10, 2003

Dexter Thomas
Senior Marketing Specialist
PACA Branch, F & V Programs
Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, SW.
Room 2095-So. Bldg.
Washington, D.C. 20250-0242



Re: PACA: Amending Regulations to Extend PACA Coverage to Fresh and Frozen Fruits and Vegetables That Are Coated or Battered; Docket No. FV02-369; 67 Fed. Reg. 77002 (Dec. 16, 2002)

Dear Mr. Thomas:

The Frozen Potato Products Institute (FPPI) welcomes this opportunity to comment on the above-referenced proposal to codify USDA's Agricultural Marketing Service's (AMS) historical policy that coated or battered frozen potato products are perishable agricultural commodities subject to coverage under the Perishable Agricultural Commodities Act (PACA). The proposed rule would amend 7 C.F.R. § 46.2(u) by adding coating and battering to the list of processes that are not considered to change a perishable agricultural commodity into a food of a different kind or character.

FPPI fully supports AMS' proposal, which grants the request made in a petition submitted by FPPI seeking precisely this codification of existing agency policy. As noted in the preamble to the proposal, this action "will help reduce litigation time and expenses for . . . produce businesses that seek to enforce their trust rights in federal district courts." To further this end, FPPI suggests only that AMS reiterate in the preamble to the final rule that it is amending the list of processes in section 46.2(u) to codify AMS' *historical* opinion that coated or battered frozen potato products are perishable agricultural commodities, not to change its policy.

Of significance, Section 46.2(u), as currently written, does not purport to be a comprehensive list of the processes that do not transform a perishable agricultural commodity into a food that is not covered by the PACA. It contains a catch-all provision which states that methods of preparation "comparable" to the ones expressly listed also do not change the essential character of a perishable agricultural commodity. Because the processes of battering and coating frozen potato products are "comparable" to the methods already listed in the regulation, they are, and always have been, methods of preparation that do not alter the essential character of the potatoes. AMS noted this fact in an August 2000 letter to FPPI, in which the agency stated that these methods of processing potatoes "likely [have] less of an impact on the texture or essential character of the potato than other processes already accepted in [section 46.2(u)], such as chopping, oil blanching, and adding sugar or other sweetening agents." 1/

FPPI appreciates and fully supports AMS' decision to codify the agency's existing policy with respect to coated or battered frozen potato products. The action will ensure the protection of countless growers, shippers, processors, and distributors who deal in the largest single frozen commodity in the United States. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gill", with a long horizontal flourish extending to the right.

Michael Gill
Executive Director